

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

IMPERIUM IP HOLDINGS (CAYMAN), LTD.,)

Plaintiff and Counterclaim Defendant,)

v.)

SAMSUNG ELECTRONICS CO., LTD.,)
SAMSUNG ELECTRONICS AMERICA, INC.,)
SAMSUNG TELECOMMUNICATIONS)
AMERICA, LLC, AND SAMSUNG)
SEMICONDUCTOR, INC.)

Defendants and Counterclaim Plaintiffs.)

Case No. 4:14-cv-00371 (ALM)

AMENDED NOTICE OF APPEAL

In light of the district court's September 13, 2017 Memorandum Opinion and Order (D.I. 403), which resolved all remaining claims for relief under 35 U.C.S. § 283 by setting the scope of the ongoing royalty and its rate, Defendants and Counterclaim Plaintiffs Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Samsung Semiconductor, Inc. (collectively "Samsung") hereby files this Amended Notice of Appeal to include an appeal from this decision, and to reflect that briefing on this issue is no longer pending. Samsung further amends its notice of appeal to include an appeal from the district court's September 13, 2017 Order granting in part Imperium's Motion for Taxation of Costs (D.I. 404).¹ Accordingly:

¹ The district court has not yet issued a final decision on Imperium's Motion for § 285 Attorneys' Fees and Non-Taxable Costs (D.I. 363). *See* D.I. 401 (ordering Imperium to file supporting documentation); *Falana v. Kent State Univ.*, 669 F.3d 1349, 1360 (Fed. Cir. 2012); (citing *Special Devs., Inc. v. OEA, Inc.*, 269 F.3d 1340, 1341 (Fed. Cir. 2001)) (holding that an

Notice is hereby given that Samsung appeals to the United States Court of Appeals for the Federal Circuit from the Judgment of this Court entered on August 24, 2016 (D.I. 330), as amended by order entered on April 27, 2017 (D.I. 360); from the Order denying Samsung's Rule 50(b) Motion for Judgment as a Matter of Law and/or Rule 59 Motion for a New Trial (D.I. 359); from the Order denying Samsung's Rule 60(b) Motion for Reconsideration on Enhanced Damages (D.I. 361); from the Order granting in part Imperium's Motion on the Appropriate Ongoing Royalty (D.I. 403); from the Order granting Imperium's Motion for Taxation of Costs (D.I. 404); and from any and all other judgments, orders, opinions, rulings, and findings that merge therein or are pertinent or ancillary to the foregoing, including, by way of illustration and not in limitation of the foregoing: the Court's Jury Instructions and orders on objections to the same (D.I. 246; D.I. 250; D.I. 276); the Order denying Samsung's Motion to Stay Litigation pending Determination of Imperium's Breach of the Sony License by the District Court of Delaware (D.I. 215); the Order denying Samsung's Motion for Leave to File Motion for Summary Judgment Out-of-Time (D.I. 219); the Orders on Samsung's Motions *in Limine*, and the Order bifurcating the Sony License Agreement issues from Trial/precluding presentation of the Sony License defense at Trial (D.I. 230; D.I. 231; D.I. 254; D.I. 260); the Order granting Enhanced Damages and on the Sony License Agreement (D.I. 329); the Order granting Imperium's request for a midtrial sanction striking defenses and the Curative Instruction (D.I. 236; D.I. 244; D.I. 270; D.I. 271; D.I. 272; D.I. 273; D.I. 274; D.I. 275); the Order denying Motion to Exclude the Opinions of Dr. Wright on Willfulness (D.I. 224); the Order denying the

award of attorney fees for an unspecified amount is not a final, appealable decision). However, that a final fees determination remains pending is not a basis for delaying an appeal on the merits. Fed. R. Civ. P. 58(a) (noting that the entry of judgment and the time for appeal may not be delayed or extended in order to tax costs or award fees); *Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 199-203 (1988).

Motion to Compel Deposition Testimony of Alan Fisch (D.I. 218); the Order denying Motion to Exclude Opinions of Ms. Riley (D.I. 225); the Order denying Samsung's Motions to Strike Products Imperium Failed to Accuse in its 029 Contentions from Imperium's Expert Report, to Strike Portion's of Dr. Wright's Rebuttal Report concerning Validity, for Leave to File Further Claim Construction, and for Leave to Submit Supplemental Expert Reports (D.I. 230; D.I. 260; D.I. 328); the Court's Claim Construction Order (D.I. 105); the Order denying Samsung's Motion for Leave to Amend Invalidity Contentions (D.I. 300); and from any and all related adverse Orders, rulings, and judgments.

Payment of the required fee of \$505 is provided with this Notice of Appeal. This fee includes the \$500 fee for docketing a case on appeal as required by 28 U.S.C. § 1913 and Fed. Cir. R. 52(a), and the \$5 fee for filing a notice of appeal as required by 28 U.S.C. § 1917.

The district court's decision resolved all remaining claims that had been pending under 35 U.S.C. § 283, and so constitutes a final decision on the merits, removing the jurisdictional issue previously raised. Samsung respectfully acknowledges that, although there is now a final decision on the merits, the district court has not yet entered its final judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure. To the extent that this appeal is not ripe, Samsung requests that this notice of appeal be treated as filed on the date a final appealable judgment is entered pursuant to Fed. R. App. P. 4(a)(2) and/or Fed. R. App. P. 4(a)(4)(B)(ii).

Respectfully submitted,

Dated: October 13, 2017

By: /s/ Clyde M. Siebman

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2017, a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

By: Clyde M. Siebman
Clyde M. Siebman